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SOUTHERN DISTRICT OF NEW YORK

4 Case No. 13-13030-ma

6 | In the Matter of:

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8 RESIDENTIAL CAPITAL, LLC, et al.,

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10 | Debtors.

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14 United States Bankruptcy Court

15 | One Bowling Green

16 | New York, New York

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18 | September 8, 2014

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33 HON. MARTIN GLENN

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2 (CC: Doc# 7222) Adjourned RE: Motion for Omnibus Objection to
3 Claim(s) / ResCap Borrower Claims Trust's Seventieth Omnibus
4 Objection to Claims (Res Judicata Borrower Claims)

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6 (CC: Doc# 7017) Final Pre-Trial Conference RE: ResCap Borrower
7 Claims Trust's Objection to Proofs of Claim Filed By Frank Reed
8 and Christina Reed.

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RESIDENTIAL CAPITAL, LLC, ET AL.

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1 P R O C E E D I N G S

2 THE COURT: All right, please be seated. All right.

3 We're here in Residential Capital. It's number 12-12020.

4 MR. WISHNEW: Good morning, Your Honor.

5 THE COURT: Nice to see you, Mr. Reed.

6 Mr. Wishnew?

7 MR. WISHNEW: Thank you, Your Honor. Your Honor,
8 there are two matters on today's agenda. The first contested
9 matter on today's agenda is on page 2 under II, claims
10 objections, item 2 specifically, the ResCap Borrower Claims
11 Trust's seventieth omnibus objection to claims, which deal with
12 seven res judicata borrower claims.

13 Your Honor, through this seventieth omnibus objection,
14 the Borrower Trust seeks to expunge seven borrower proofs of
15 claim that do not represent valid pre-petition claims against
16 the debtors, because they are barred by the doctrine of res
17 judicata. Each of the claims in the objection are based on
18 state or federal court litigation that has been dismissed with
19 prejudice, either as to the debtors or to nondebtors that were
20 codefendants with the debtors in each action. I will refer to
21 the latter as the "nondebtor litigations".

22 The nondebtor litigations were not dismissed against
23 the debtors because of the automatic stay put into effect as a
24 result of ResCap's Chapter 11 filing. However, in each
25 nondebtor litigation, at least one of the nondebtor

RESIDENTIAL CAPITAL, LLC, ET AL.

5

1 codefendants was either the original lender of the loan at
2 issue, a subsequent servicer or previous servicer to the loan
3 at issue, or was the investor of the loan at issue; and the
4 debtor-defendants were either the servicer, investor,
5 originator, or purchaser of the loan at issue. Furthermore, in
6 each nondebtor litigation, the plaintiff-claimant's allegations
7 did not distinguish between the actions of the debtor
8 codefendants and the nondebtor codefendants.

9 In support of the objection as well as the reply filed
10 last week, the Borrower Trust submitted the declarations from
11 Lauren Delehey, chief litigation counsel to the ResCap
12 Liquidating Trust. She is here in court today and available to
13 answer any questions the Court may have for her.

14 The objection was filed on July 2nd, 2014. Responses
15 to the objection were due August 1st, 2014. The Borrower Trust
16 received only one response, and that was from Mr. Ramon Quiroz.
17 I believe Mr. Quiroz is in the courtroom today.

18 THE COURT: Mr. Quiroz, would you come on up? Are you
19 in the courtroom. Come on up to -- why don't you have a seat
20 at the table over there, okay? Go ahead have a seat over
21 there? Yeah, sure.

22 Go ahead, Mr. Wishnew.

23 MR. WISHNEW: Thank you, Your Honor. So briefly, Your
24 Honor, with regards to Mr. Quiroz's claim; on or about June
25 1st, 2010, Mr. Quiroz filed a complaint in the Eastern District

RESIDENTIAL CAPITAL, LLC, ET AL.

6

1 of New York against GMAC Mortgage, Homecomings, and nondebtors
2 U.S. Bank National Association, as trustee, New Century
3 Mortgage Corp., and Steven J. Baum, P.C. The case was styled
4 as Quiroz, et al. v. U.S. Bank National Association, case
5 number 10-cv-02485. The complaint contained various causes of
6 action, including violations of TILA and securities fraud.

7 The debtors filed a motion to dismiss pursuant to
8 Rules 12(b)(1) -- Federal Rules of Civil Procedure, 12(b)(1)
9 and 12(b)(6) on November 2nd, 2010. The court referred the
10 complaint and a motion to dismiss to the Magistrate Judge Joan
11 M. Azrack, who issued a report and recommendation on May 16th,
12 2011, recommending the debtors' motion to dismiss be granted.

13 The district court adopted the report and
14 recommendation on August 8th, 2011, and dismissed the complaint
15 with prejudice.

16 On September 8th, 2011, Mr. Quiroz appealed the
17 district court order to the United States Court of Appeals for
18 the Second Circuit, case number 11-3663. On May 21st, 2012, a
19 notice of bankruptcy was filed in the Second Circuit advising
20 of the debtors' Chapter 11 proceeding.

21 On November 8th, 2012, Mr. Quiroz filed his proof of
22 claim against GMAC Mortgage and Homecomings, designated as
23 claim number 4413, asserting a general unsecured claim in the
24 amount of 522,000 dollars. The respondent does not list the
25 basis for his claim in box 2 of the proof of claim, however,

RESIDENTIAL CAPITAL, LLC, ET AL.

7

1 attached to the proof of claim are the same exhibits that were
2 attached to the complaint filed in the Eastern District of New
3 York.

4 Additionally, in response to the debtors' diligence
5 requests, the respondent references an April 25th, 2000 Second
6 Circuit opinion which construed the respondent's motion for
7 summary judgment as a motion for summary reversal of a district
8 court's order.

9 On June 10th, 2013, respondent filed a motion for
10 relief from the automatic stay to proceed with his Second
11 Circuit appeal, and this Court, on September 13th, granted the
12 respondent's motion to lift the stay in order to proceed with
13 the appeal. And that order was docketed at docket number 5039.

14 As the order provides, the relief is limited for the
15 purpose of allowing the appeal to be adjudicated. On April
16 14th, 2014, the Second Circuit dismissed the appeal, because it
17 "lacks an arguable basis in law or fact." On August 15th,
18 2014, Mr. Quiroz filed a petition for writ of certiorari with
19 the United States Supreme Court. Your Honor --

20 THE COURT: Did my order lifting the stay prevent Mr.
21 Quiroz from filing a cert petition? I mean, isn't that part of
22 the appellate process? I was surprised to see that the Trust
23 objected to the filing of the petition for writ of certiorari.
24 I wish somebody had told me that.

25 MR. WISHNEW: So paragraph 1 of your order, Your

RESIDENTIAL CAPITAL, LLC, ET AL.

8

1 Honor, says: "The automatic stay is lifted for the limited
2 purpose of allowing the appeal to be adjudicated by the Second
3 Circuit."

4 THE COURT: Go ahead.

5 MR. WISHNEW: Thank you, Your Honor. Your Honor,
6 we're seeking to disallow Mr. Quiroz's claim on the basis of
7 res judicata. The jurisdiction of the district court was based
8 on federal question jurisdiction. The federal rule for res
9 judicata is that a final judgment on the merits of an action
10 precludes the parties or their privies from relitigating issues
11 that were or could have been raised in that action. The movant
12 making the res judicata argument must show that the previous
13 action involved an adjudication on the merits --

14 THE COURT: Let me interrupt you. I know what the
15 standard for res judicata is, and I know what the standard for
16 Rooker-Feldman is. What did the district court do with respect
17 to Mr. Quiroz's claim for negligence?

18 MR. WISHNEW: The district courts did not exercise
19 supplemental jurisdiction over that specific count.

20 THE COURT: And so is it fair to say that the district
21 court did not decide on the merits -- did not dismiss the
22 negligence claim on the merits, but rather for lack of
23 supplemental jurisdiction?

24 MR. WISHNEW: That would be correct, Your Honor.

25 THE COURT: Okay. How do you get to res judicata over

RESIDENTIAL CAPITAL, LLC, ET AL.

9

1 the negligence claim, based on the district court's decision?

2 MR. WISHNEW: I get to res judicata, Your Honor,
3 because the appeal -- the appellate court, the Second Circuit,
4 in its decision specifically said that --

5 THE COURT: The appellate court affirmed the district
6 court. The district court determined that all but two of the
7 claims were barred by Rooker-Feldman and res judicata. The
8 district court dismissed the negligence claim and one fraud
9 claim, but that fraud claim appears to have been against Steven
10 J. Baum. But dismissed the negligence claim for lack of
11 subject matter jurisdiction, concluding that it would not
12 exercise supplemental jurisdiction. It did not dismiss the
13 claim on the merits.

14 MR. WISHNEW: However, the Second Circuit also found
15 that the appeal lacked an arguable basis in law or fact, which
16 is the equivalent of saying that the --

17 THE COURT: Hardly, hardly.

18 MR. WISHNEW: -- appeal --

19 THE COURT: Come on, Mr. Wishnew. How did the Second
20 Circuit decide that a claim which -- they affirmed the district
21 court. The district court decided not to hear the negligence
22 claim. So let me back up for a second. Because this is at
23 least the second time that your office has done something that
24 I chastised them about before.

25 The objection, the only thing it attached from the

RESIDENTIAL CAPITAL, LLC, ET AL.

10

1 district court, was the decision of the district court with
2 respect to whether counsel should be appointed for Mr. Quiroz.
3 It wasn't until the reply papers that you actually attached the
4 magistrate judge's report and recommendation and the district
5 court's adoption of the report and recommendation. And it is
6 in your reply brief that you make the substantive arguments
7 about what the effect of the district court's decision is.

8 Raising those issues in the reply brief for the first
9 time, is inappropriate. I've challenged your firm for this
10 before with respect to claim objections. You can't sit back,
11 file -- yes you raised res judicata, but the only decision of
12 the district court you attached was with respect to appointment
13 of counsel. Now, maybe it was an oversight, but that's what
14 you did. Okay?

15 So, Mr. Quiroz filed his opposition and he didn't have
16 all of your arguments in front of him when he filed his
17 response.

18 Here's what the Court's going to do. Well, first, let
19 me hear from Mr. Quiroz first. Why don't you come on up to the
20 microphone, Mr. Quiroz.

21 MR. QUIROZ: Yes, Your Honor.

22 THE COURT: You have to identify yourself for the
23 record.

24 MR. QUIROZ: My name is Ramon Quiroz. I am living at
25 89-37 Metropolitan Avenue, Rego Park, New York, 11374.

RESIDENTIAL CAPITAL, LLC, ET AL.

11

I actually -- my claim is actually because my wife
died, Your Honor. All right? They've threatened us for seven
years, and I've been in seven courts -- this is the seventh
court I am. And I've been litigating in -- you know, in every
other court they denied a -- they denied to me that -- they
were actually foreclosing home -- their right -- they have no
right to do so. And I proved to the Second Circuit that, you
know, everything was fraud. And that's why they gave me so
much on the reversal.

THE COURT: The Second Circuit didn't reverse. The
Second Circuit --

MR. QUIROZ: The Second Circuit gave me so much on the
reversal, and that, they changed --

THE COURT: No, no, no, no.

MR. QUIROZ: -- their mind --

THE COURT: Mr. Quiroz, the Second Circuit concluded
that you didn't state any facts or law to support your appeal,
and they dismissed the appeal.

Let me ask you this, Mr. Quiroz, in the complaint that
you filed in Brooklyn in the district court, in the third cause
of action at pages 13 and 14, you alleged that the defendants
have caused serious physical impairment and psychological harm
to Mr. Ramon Quiroz?

MR. QUIROZ: It started with me, yes, Your Honor.

THE COURT: Okay.

RESIDENTIAL CAPITAL, LLC, ET AL.

12

1 MR. QUIROZ: And my wife died.

2 THE COURT: That's the only place where you alleged
3 physical impairment or psychological harm.

4 MR. QUIROZ: Yes.

5 THE COURT: In the prayer in the complaint, on page
6 18, referring to the third cause of action, "for physical,
7 psychological detriment and damages caused to Helen Quiroz and
8 her husband, Mr. Ramon Quiroz" --

9 MR. QUIROZ: Yes.

10 THE COURT: -- "Mr. Quiroz is suffering and with
11 serious illness, impairment, and disability at this time. He
12 is officially disabled," and it goes on, and you requested
13 fifty million dollars in damages.

14 So that's the only place where, from my reading, that
15 you alleged emotional distress damages. Am I correct in that?

16 MR. QUIROZ: I'm not really too sure exactly what
17 you're saying, Your Honor.

18 THE COURT: Okay. So, Mr. Quiroz, you heard me
19 addressing Mr. Wishnew. And the Trust did not attach the
20 decision of the magistrate judge and of the district court
21 until the reply papers, which was not correct on their part.
22 What I need to know is whether you want more time to file an
23 additional response, limited solely to the additional papers
24 that the Trust submitted as part of its reply. If you want
25 that time, I will give it to you.

RESIDENTIAL CAPITAL, LLC, ET AL.

13

1 MR. QUIROZ: What I actually want, Your Honor, like
2 I'm very sick now. I can't handle any more.

3 THE COURT: Okay.

4 MR. QUIROZ: And I've been doing this seven years.

5 THE COURT: Okay.

6 MR. QUIROZ: I want to stop.

7 THE COURT: All right, I don't --

8 MR. QUIROZ: I want you to help me up.

9 THE COURT: I want to be sure -- if you want to
10 proceed on the papers -- I mean, it wasn't the first time you
11 saw those papers. You obviously had the district -- you had
12 the decision of the magistrate judge, you had the decision of
13 the district judge, and you have the decision from the Court of
14 Appeals. So none of this was new, other than the fact that the
15 Trust did not put it in until the reply. But you had received
16 all of those, I take it?

17 MR. QUIROZ: Yes.

18 THE COURT: Okay. All right, well, here is what I am
19 going to do.

20 Is there anything else you want to say, Mr. Quiroz?

21 MR. QUIROZ: Yes.

22 THE COURT: Go ahead.

23 MR. QUIROZ: Your Honor, I actually wrote a letter to
24 you for you to read and on the basis that I have on the Supreme
25 Court now, and it's a letter, you know, whatever I didn't do in

RESIDENTIAL CAPITAL, LLC, ET AL.

14

1 the Second Circuit's here. So I would like you to have this
2 document.

3 THE COURT: How long is that document? How many
4 pages?

5 MR. QUIROZ: How long is the -- oh, it's like twenty,
6 thirty pages.

7 THE COURT: Okay. So I'm going to permit you to --
8 we'll take it from you and we'll get it scanned and put on the
9 docket.

10 MR. QUIROZ: Yes.

11 THE COURT: And Mr. Wishnew, if you want to -- there
12 is an issue I'm going to want the Trust to address in a
13 supplemental brief, Mr. Wishnew, and I'll identify that in a
14 moment.

15 MR. QUIROZ: Your Honor, the only -- the only thing
16 that I want --

17 THE COURT: Go ahead.

18 MR. QUIROZ: -- is like to take consideration, my wife
19 died because she was -- they were -- we were there, the whole
20 family, seven years. And they have no right for it. They're
21 not the lender. They're not the real party to the -- you know.

22 THE COURT: Look, Mr. Quiroz, I'm not -- the
23 difficulty you're facing is that you raised all or most of
24 these issues in the state court and the stat court ruled
25 against you, and then you raised them in the district court,

RESIDENTIAL CAPITAL, LLC, ET AL.

15

1 and the district court ruled against you.

2 So federal courts, including myself, I don't sit in
3 review of what a state court does. Okay? So when the
4 foreclosure court -- you had two state court actions, both
5 were -- the first was the foreclosure action which judgment was
6 against you. The second was an action you brought, and they
7 dismissed it on the technical grounds of res judicata, the
8 issues had been decided in the first action.

9 When you went to the district court, which was before
10 the bankruptcy, the court dismissed all of your claims except
11 for the negligence claim, finding that this doc -- you can't
12 relitigate the same issues in more than one court, and it found
13 that res judicata applied, that the state court had already
14 decided the issues, or they necessarily should have been raised
15 in the state court. So that's the problem -- the major problem
16 you face.

17 Anything else you want to say?

18 MR. QUIROZ: In the district court, actually, they
19 dismiss my case because I didn't serve proper to U.S. Bank.
20 That's why they dismissed.

21 THE COURT: No, that's not what -- there are two very
22 clear opinions. The report and recommendation of Magistrate
23 Judge Azrack is eighteen pages long, and it's quite detailed.
24 And you filed -- you timely filed objections to it. And then
25 District Judge Matsumoto wrote a seventeen-page decision and

RESIDENTIAL CAPITAL, LLC, ET AL.

16

1 order adopting the report and recommendation of the magistrate
2 judge.

3 So the district court gave, I think, quite careful
4 attention to your arguments. And for the most part it found --
5 and you acknowledged in the district court that you were
6 seeking to get the district court to reverse the decision that
7 the state court had reached. And federal courts can't do that,
8 only the Supreme Court can do that.

9 All right. So I'm going to direct the Trust to file a
10 supplemental memorandum of law. And if you want to address it,
11 you can as well. The first issue, Mr. Wishnew, is whether the
12 negligence claim is barred by res judicata from either the
13 state court or federal court decisions. I think you basically
14 cheated in your papers by arguing that res judicata applied to
15 the negligence claim, because the district court clearly did
16 not say that.

17 But it may well be -- my reading of Mr. Quiroz's
18 complaint is that -- it's not very clear about a negligence
19 claim, it's included with the fraud claim -- the district court
20 clearly found the fraud claim is barred by Rooker-Feldman and
21 res judicata. So is the negligence claim barred by res
22 judicata or Rooker-Feldman as a result of the state court
23 decision? The fact that the district court didn't decide it
24 doesn't preclude me from concluding that res judicata applies
25 based on the state court decision. You didn't argue about

RESIDENTIAL CAPITAL, LLC, ET AL.

17

1 that.

2 Second, has the claimant stated a claim for
3 negligence? In Magistrate Judge Azrack's report and
4 recommendation, at pages 17 and footnote 13 on page 18, she
5 concluded that even reading the complaint liberally in light of
6 plaintiff's pro se status, there is no indication that a valid
7 negligence claim could be stated. She goes on. You can
8 address that.

9 And finally, is the negligence claim, if there was one
10 stated, barred by the applicable statute of limitations, which
11 I believe is three years, but you can address that. Because
12 Mr. Quiroz is complaining about a loan from Homecomings that
13 was granted in 2005, and the issue seems to be as to whether it
14 was a fixed rate for five years or not. And he alleges that in
15 2007 Homecomings increased his interest rate. So whether the
16 cause of action would have accrued in 2005 or 2007, the proof
17 of claim was not filed until November 8th, 2012. And it's very
18 likely that any negligence claim would be barred by the statute
19 of limitations.

20 How much time do you want to address these issues?

21 MR. WISHNEW: Your Honor, Friday, February 19th -- I'm
22 sorry, September 19th.

23 THE COURT: September 19th. All right.

24 And I'll give Mr. Quiroz until Friday, October 3rd,
25 two weeks thereafter, if you want to file anything else, Mr.

RESIDENTIAL CAPITAL, LLC, ET AL.

18

1 Quiroz. So they're going to file --

2 MR. QUIROZ: I will.

3 THE COURT: -- a brief by September 19th, and I'll
4 give you until Friday, October 3rd, if you want to file
5 anything else in response.

6 MR. QUIROZ: Okay.

7 THE COURT: Okay? And then I'm going to decide the
8 matter on the papers.

9 MR. QUIROZ: Yes.

10 THE COURT: Okay?

11 MR. QUIROZ: Yes, Your Honor.

12 THE COURT: Thank you very much, Mr. Quiroz.

13 MR. QUIROZ: Thank you so much, Your Honor.

14 THE COURT: Okay.

15 All right, the next matter on the calendar is the
16 final pre-trial conference regarding the claims of Frank and
17 Christina Reed.

18 MR. WISHNEW: Your Honor, Jordan Wishnew of the ResCap
19 Borrower Claims Trust. Just to fill out the record on the
20 prior matter, I just wanted to say that the -- not including
21 the district court order and the magistrate report was simply
22 an oversight on our part. We are very mindful of Your Honor's
23 feedback that you've given us on prior objections about not
24 raising new arguments in the reply. And in this matter, it was
25 entirely just an oversight.

RESIDENTIAL CAPITAL, LLC, ET AL.

19

1 Having said all that, I defer -- I will turn over the
2 podium to my colleague, Barbara Hager, who is the courtroom --

3 THE COURT: Okay.

4 MR. WISHNEW: -- from the firm of Reed Smith. She
5 will be taking the lead on this pre-trial conference.

6 THE COURT: Okay, let me just say, with respect to the
7 Trust's seventieth omnibus objection --

8 MR. WISHNEW: Yes, Your Honor.

9 THE COURT: -- the objections are sustained as to all
10 of the claims other than the Quiroz claim.

11 MR. WISHNEW: Excellent, Your Honor. We will submit a
12 revised form of order to chambers, electronically, after the
13 hearing .

14 THE COURT: Okay, thank you.

15 MS. HAGER: Good morning, Your Honor. Barbara Hager
16 with Reed Smith, co-counsel for the ResCap Borrower Claims
17 Trust.

18 THE COURT: All right, Mr. Reed, do you want to make
19 your appearance? You can do it from sitting; you don't have to
20 get up. Just speak into the microphone. You can pull it
21 closer to you, if you want.

22 MR. REED: Frank Reed, creditor pro se.

23 THE COURT: Okay, thanks, Mr. Reed.

24 Go ahead, Ms. Hager.

25 MS. HAGER: Good morning, Your Honor. So we're here

RESIDENTIAL CAPITAL, LLC, ET AL.

20

1 for the final pre-trial conference. Specifically, what we have
2 remaining for the trial which is set for next week, are four
3 claims. One is a claim for negligence, which is Count II of
4 the proof of claim. There is a breach of contract claim
5 remaining against GMAC only, which is Count III. There's a
6 punitive damages claim for actual malice, which is Count IV,
7 and a Consumer Fraud Act claim which is Count V, which only
8 remained as to one point, which was an allegation in the
9 original foreclosure complaint.

10 Your Honor, that being the case, we have submitted our
11 pre-trial papers which set forth our position. I'm happy to go
12 through that to the extent Your Honor would like me to do so.
13 Or would you prefer more of a status on where we stand?

14 THE COURT: No. Before we get to that, I'd like to
15 have a brief discussion about the motions in limine.

16 MS. HAGER: Sure.

17 THE COURT: So I read the three motions in limine.
18 Mr. Reed e-mailed his responses this morning. They were not
19 timely, but the Trust consented, and the Court agreed that he
20 could submit them by 9 o'clock. I see you were copied on the
21 e-mail.

22 I have a question with respect to one aspect.
23 Ordinarily, I should say, I don't hear argument on motions in
24 limine. I just -- I'm just telling you what my practice is. I
25 don't -- I usually just decide them. But I have a question on

RESIDENTIAL CAPITAL, LLC, ET AL.

21

1 one aspect of one of them.

2 I believe I read in one of your motions with respect
3 to credit reports, that the Trust had requested production of
4 credit reports and that none were produced. Am I correct in
5 that?

6 MS. HAGER: Yes, Your Honor, that's correct. The only
7 credit report that I have seen is a credit report that was
8 requested in connection with the Law Division case that another
9 firm handled, and we got a copy of their file. There is a
10 singular credit report from Trans Union from 2008, which does
11 not even reflect GMAC reporting anything about the account.

12 THE COURT: Okay, Mr. Reed, can you address -- so when
13 I read the papers, it was my understanding that you had not
14 pro -- well, Ms. Hager, did you request copies of credit
15 reports?

16 MS. HAGER: Yes, Your Honor, we did. We served Mr.
17 and Mrs. Reed with a request for production of documents,
18 requests for interrogatories and requests for admissions, none
19 of which were responded to in any way.

20 THE COURT: Okay. Mr. Reed, do you want to address
21 this issue of whether you provided credit reports? Because one
22 of the things you contend is that the wrongful foreclosure
23 adversely affected credit reporting with respect to you, but
24 you haven't provided the credit reports?

25 MR. REED: I think that's a mischaracterization. The

RESIDENTIAL CAPITAL, LLC, ET AL.

22

1 effect that I've alleged is not on the credit report itself,
2 it's on the liquidity of the property as to public reporting in
3 regard to a lis pendens.

4 THE COURT: I don't think that's what I read. All
5 right. I'm going to enter -- I'm going to rule now on the
6 motions in limine and a written order will be entered. I'm
7 just going to basically read what I have in the written order.
8 I had this one point that I did want clarified.

9 I'll skip the preliminaries, but I refer to the prior
10 orders that the Court has entered, limiting issues, et cetera.

11 But then I say, many of the issues raised by the Trust
12 cannot be resolved by motions in limine. The Court will need
13 to hear the proposed testimony to rule. This order will,
14 however, provide rulings on some issues and parameters for the
15 testimony at trial. Any issue raised by the motions and not
16 addressed in this order are reserved for trial.

17 1) The three motions in limine seek to exclude the
18 expert testimony of the three identified experts: Carter,
19 Donati, and Hendricks. Expert reports have been provided by
20 the three proposed experts, and the motions attach copies of
21 the reports.

22 The Court's review of the reports make clear that the
23 reports would not be admissible at trial over the objection of
24 the Trust. They are filled with impermissible hearsay. They
25 stray into areas beyond the witnesses' apparent expertise, and

1 the Hendricks report addresses alleged damages the Court has
2 already foreclosed, namely damages relating to any other
3 properties or lost business opportunities that the Reeds assert
4 they lost because of the foreclosure action. And they contain
5 faulty analysis and unsupported conclusions.

6 But the issue here is whether the testimony of the
7 three witnesses is admissible on any of the matters covered in
8 the reports. On that score, the Court concludes that all three
9 witnesses may testify on at least some of the matters covered
10 by their reports.

11 2) The trust challenges the experts' qualifications.
12 The Court concludes that with the exception of one specific
13 area identified below in what I'll -- in paragraph 5, the
14 Trust's objection goes to the weight to be accorded to the
15 experts' testimony on the issues on which the witnesses are
16 permitted to testify. The Court cannot exclude their testimony
17 in its entirety, as a matter of law, because of the
18 qualifications of the individuals.

19 3) Because the Reeds have failed to produce any credit
20 reports reflecting an adverse impact on the Reed's credit from
21 the alleged wrongful foreclosure, despite the Trust's timely
22 request that such items be produced, neither Mr. Reed nor any
23 of the experts may testify about the effect of credit reporting
24 with respect to the Reeds.

25 4) Expert testimony about any alleged damages

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 resulting from the Reeds' failed efforts to refinance the
2 mortgage on the property will only be permitted if competent
3 evidence is offered and admitted in evidence related to the
4 failed efforts. Assuming a proper foundation, further
5 limitations on such testimony may be appropriate, but must
6 await hearing testimony and specific questions at trial.

7 5) None of the experts will be permitted to testify
8 about noneconomic damages to the Reeds from the stress,
9 humiliation, mental anguish and frustration as a result of
10 GMAC-M's efforts to foreclose on the property. The three
11 experts are not qualified to testify on such issues.

12 Mr. Reed is permitted to testify on these issues
13 concerning him, but not relating to his wife, who will not be
14 permitted to testify.

15 6) Ms. Donati will be permitted to testify about New
16 Jersey foreclosure custom, practice, and procedures, with
17 reference to applicable statutes and rules. But she will not
18 be permitted to offer opinion testimony whether any of the
19 debtors violated applicable statutes and rules.

20 7) Expert testimony will be permitted, assuming a
21 proper foundation for the alleged economic damages suffered by
22 the Reeds as a result of the alleged diminution in the value of
23 the property, as a result of wrongful foreclosure.

24 Okay. So that's the substance. It will be filed
25 shortly after the hearing. I always want to make sure that

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25

1 everybody knows in advance what can and can't be done during
2 the trial. So that's with respect to the rulings on the
3 motions in limine.

4 Ms. Hager, have you provided Mr. Reed with copies of
5 whatever exhibits you intend to offer into evidence at the
6 trial?

7 MS. HAGER: Your Honor, the exhibits were overnighted
8 to both the Court and Mr. Reed on Friday.

9 THE COURT: Okay.

10 MS. HAGER: So they should be at his house this
11 morning.

12 THE COURT: All right. Okay. And how many witnesses
13 are you calling?

14 MS. HAGER: Your Honor, we have two witnesses. One is
15 a corporate witness, Lauren Delehey, and the other is an expert
16 witness on credit, Oscar Marquis.

17 THE COURT: Well is he going to be able to testify in
18 light of what the Court's ruling is with respect to -- in light
19 of the failure to produce credit reports?

20 MS. HAGER: Right. Based on what Your Honor just read
21 into the record, I'd like to consider whether we still need to
22 call Mr. Marquis. But for the moment, I'd like to keep him on.

23 THE COURT: Okay. Just bear with me a second, okay?

24 MS. HAGER: Sure.

25 (Pause)

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26

1 THE COURT: Are there any deposition ex -- I guess the
2 deadline was 5 o'clock today for the final witness lists and
3 exhibit lists, pre-marked exhibits, deposition excerpts. Are
4 there any depositions that you're relying on?

5 MS. HAGER: No, Your Honor.

6 THE COURT: Okay.

7 MS. HAGER: Except to the extent, obviously, that they
8 might be needed for impeachment purposes. But --

9 THE COURT: Have there been depositions taken in this?

10 MS. HAGER: There have. We deposed Mr. Reed, Ms.
11 Carter, and another witness by the name of Drew Murdock.

12 THE COURT: Okay. All right, Mr. Reed, have you
13 provided Ms. Hager with copies of the exhibits that you intend
14 to offer?

15 MR. REED: Not as of yet, but I believe they will be
16 there before 5 o'clock.

17 THE COURT: 5 o'clock. Okay. And all of those
18 documents have previously been produced in the litigation?

19 MR. REED: Yes.

20 THE COURT: Okay. And what witnesses do you intend to
21 call?

22 MR. REED: I actually -- we had almost decided against
23 Mr. Hendricks. I don't think we're going to be calling him,
24 especially in light of what -- your ruling.

25 THE COURT: Okay.

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27

1 MR. REED: But I'm not sure yet. And -- but so it
2 leaves Louise Carter, myself, Ms. Donati, Mr. Murdock, and a
3 yet-still-waiting-to-be-identified authentication expert, a
4 corporate rep from TD Bank which is on our list.

5 THE COURT: What is it that you need to authenticate?

6 MR. REED: A written correspondence regarding a denial
7 of financing from TD Bank. And I asked Ms. Hager if she would
8 voluntarily admit those documents, because if I'm not mistaken,
9 Your Honor had said only if there was a basis to believe
10 they're not authentic --

11 THE COURT: I didn't say authentic. I said with
12 respect -- because one of your experts is testifying about --
13 proposes to testify about the effect of your being unable to
14 refinance. And if you establish that you were denied an
15 opportunity to refinance and put in the foundation for that,
16 I'm going to permit the expert to testify about it.

17 I'll have to see when specific questions are asked and
18 answered -- I'm not saying every question that you might ask
19 the expert, but I thought you were entitled to do that.

20 So, Ms. Hager, is there an issue about the
21 authenticity of the documents from TD Bank?

22 MS. HAGER: There is, Your Honor. Mr. Reed is
23 specifically referring to two letters from TD Bank, the
24 authenticity of which is suspect.

25 THE COURT: And you've told him which documents?

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28

1 MS. HAGER: I have.

2 THE COURT: Are there other documents from TD Bank?

3 MS. HAGER: No, Your Honor. Those are the only two.

4 THE COURT: Two? Okay. All right.

5 And who's -- so you're trying to get a witness from TD
6 Bank?

7 MR. REED: Well, it's -- Your Honor, the letters come
8 from the regional president responsible for the State of New
9 Jersey. They're authentic letters. I have the e-mail trails.
10 I just don't know who at the bank -- and I've made it clear in
11 our papers -- is it the actual writer, the president who wrote
12 it, or his secretary who drafted it and e-mailed it and FedExed
13 to us -- to authenticate the actual letter. It was provided as
14 required by federal law and the Equal Credit Opportunity Act
15 that they must tell us the material reasons why the loan was
16 denied. They did it in the due course of their business
17 transactions.

18 And Ms. Hager has allowed a much less stringent
19 correspondence -- or I don't know how you say it -- from
20 another broker that I had dealt with. It was a faxed
21 paragraph, and Ms. Hager's willing to admit that one, because
22 it's a little more amorphous as to what opportunity I lost,
23 whereas the TD Bank letter is very, very clear and verified in
24 a subsequent letter as to why they provided it, because of
25 the -- they were required under law to provide it.

RESIDENTIAL CAPITAL, LLC, ET AL.

29

1 THE COURT: And what is your -- tell me more
2 specifically, Ms. Hager, the basis for your objection on
3 grounds of authenticity?

4 MS. HAGER: Sure, Your Honor. As Mr. Reed mentioned,
5 the first of the two letters purports to be a denial letter
6 providing the reason that Mr. Reed was denied for financing
7 pursuant to the Equal Credit Opportunity Act. And that letter
8 is from 2012. But Mr. Reed was allegedly in process for a
9 refinance in 2008. The Equal Credit Opportunity Act requires
10 such notice of denial to be provided within thirty days.
11 Typically, it's on a standard form. It's not something that's
12 typically on a letter.

13 It's my understanding that the letter from 2012 was
14 specifically provided to Mr. Reed pursuant to his request when
15 he was going through the independent foreclosure review
16 process.

17 The second letter, which is from the same author, Mr.
18 Curley at TD Bank, was provided to me at the end of the day on
19 the last day of discovery in this matter, August 22nd, which
20 essentially clarifies that the first letter was provided
21 pursuant to the Equal Credit Opportunity Act. That particular
22 letter does not appear to be on TD Bank letterhead. Its
23 formatting is suspect. The font is not the same everywhere.
24 It gives me cause for concern. So unless he can bring in Mr.
25 Curley, I'm going to --

RESIDENTIAL CAPITAL, LLC, ET AL.

30

1 THE COURT: I don't know that he has to bring Mr.
2 Curley in, but he's got to bring somebody from TD Bank.

3 MS. HAGER: Somebody.

4 MR. REED: Your Honor?

5 THE COURT: Just a second, Mr. Reed.

6 So you're agreeing that one of the two letters can
7 come in?

8 MS. HAGER: I don't -- because I have suspicions as to
9 the second letter that's giving me concern as to the nature of
10 the first letter as well. But my more specific comments are
11 directed to the second letter.

12 THE COURT: Okay.

13 MS. HAGER: That's right.

14 THE COURT: All right. But that doesn't answer my
15 question. Are you going to object to the admissibility of the
16 first letter?

17 MS. HAGER: I will object to the admissibility of the
18 first letter.

19 THE COURT: On grounds of lack of authentication --
20 authenticity?

21 MS. HAGER: Right, lack of authenticity.

22 THE COURT: Okay. Go ahead, Mr. Reed. You don't have
23 to have Mr. Curley. You're going to need somebody from TD Bank
24 to authenticate it. But --

25 MR. REED: Well, I -- are we -- I guess I'm ignorant

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31

1 of -- I may subpoenas them. Is that correct? Is that --

2 THE COURT: You better get going if you're going to.

3 Yeah. Well, where are they located?

4 MR. REED: Cherry Hill, New Jersey.

5 THE COURT: I don't know whether they're within
6 subpoena range.

7 MS. HAGER: I'm not sure if that's within a hundred
8 miles or not.

9 MR. REED: And I would like to make a point, Your
10 Honor, as to the thirty-day rule, or whatever the days. TD --
11 a bank does not have to provide it. They can tell you orally.
12 And then if you ask at any time after for clarification in
13 writing you can obtain it.

14 At the time, as I've said all along in our filings and
15 papers that were filed even with the independent foreclosure
16 review, we were told orally why and then it was later, when I
17 actually had a reason to have to verify it, that I requested it
18 from TD Bank. Then TD Bank provided it and they told me why
19 they would provide it. They would -- they didn't want to --
20 believe me, they didn't want to get involved with my issues.
21 They provided it because they had to.

22 THE COURT: Do you have any explanation as to why it's
23 not on TD letterhead? I'm assuming --

24 MR. REED: It is. No, it is on TD letterhead. It's
25 just the -- one is in black and white and the other one is in a

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32

1 green -- there's a green logo on it. I can't tell you why the
2 secretary used the different paper. I mean, it's -- you know,
3 they sent me a hard copy and then they e-mailed it to me. I
4 have an incoming e-mail from them with the attachment, even.

5 THE COURT: Everybody sit still. I just want to get
6 something off my bookshelf. You don't have to get up.

7 (Pause)

8 THE COURT: I just needed a --

9 MR. REED: It's your courtroom, Your Honor.

10 (Pause)

11 THE COURT: Ms. Hager, have you tried to contact TD
12 Bank?

13 MS. HAGER: I'm sorry, Your Honor?

14 THE COURT: Have you contacted TD Bank to see whether
15 you can verify that this document is authentic?

16 MS. HAGER: No, I have not, Your Honor.

17 THE COURT: All right, here's what I'm going to order
18 with respect to the document. Mr. Reed, if you intend to
19 offer -- it's a letter, is that --

20 MR. REED: There are two of them, Your Honor, yes.

21 THE COURT: If you intend to offer the letters in
22 evidence, since Ms. Hager indicates she intends to object to
23 the authenticity of both of them, I'm going to require that you
24 get a declaration or affidavit from an officer or employee of
25 TD Bank testifying that the letters were prepared by TD Bank

RESIDENTIAL CAPITAL, LLC, ET AL.

33

1 and sent to you in the ordinary course of their business.
2 Copies of the two letters need to be attached to the
3 declaration as exhibits.

4 If Ms. Hager wishes to contest -- if she wishes to
5 contest the authenticity of the documents, Ms. Hager, take the
6 deposition of the declarant.

7 MS. HAGER: Yes, Your Honor.

8 THE COURT: Contact TD Bank today, Mr. Reed -- unless
9 you're able -- if you can resolve this issue -- I have a
10 feeling that it may be possible that if you and Ms. Hager have
11 a telephone conversation with an appropriate person at TD Bank,
12 they can satisfy Ms. Hager over the telephone that these two
13 documents which you wish to offer are authentic. If not, you
14 need to get a declaration or affidavit.

15 If TD Bank is unwilling to do it, your problems are --
16 you're going to have to take a deposition. You can't compel
17 them to come testify -- I don't know whether it's -- I think
18 probably more than a hundred miles from here. I'm not sure you
19 can compel them to come testify here. It's a waste of time to
20 have them come testify here. So if you'll, after this hearing
21 today, talk to Ms. Hager and Mr. Wishnew and see whether you
22 can work out jointly calling TD Bank and see whether they can
23 satisfy Ms. Hager as to the authenticity of the two documents.
24 If not, I'm going to give you a chance to see if you can get a
25 declaration or an affidavit. And if she wants to take their

RESIDENTIAL CAPITAL, LLC, ET AL.

34

1 deposition, because she has questions about authenticity, she
2 can go ahead and do that.

3 Okay. Who's Mr. Murdock?

4 MR. REED: He's a long-term friend, Your Honor.

5 THE COURT: What is he going to testify about?

6 MR. REED: It's really a very simple thing. What was
7 intended to be done with the proceeds from the sale of the
8 property at 817 Matlack Drive. And the only one testify --

9 THE COURT: What's that relevant to? I've already
10 said -- I already ordered that you can't offer any evidence of
11 damages relating to any other investment opportunities,
12 anything like that. So what is Mr. -- is it Murdock or
13 Matlock? What is his name?

14 MR. REED: Murdock.

15 THE COURT: Murdock -- what --

16 MS. HAGER: Matlack is the street that I live on.

17 THE COURT: I'm sorry. Yeah. What is Mr.
18 Murdock's -- what issue is Mr. Murdock's testimony -- I mean,
19 you can bring him here, but I'm just telling you now, I'm
20 sticking by my earlier ruling.

21 MR. REED: Absolutely. All right.

22 THE COURT: Okay. So that's why -- I'm pressing you
23 hard about it. I'm not saying don't call him.

24 MR. REED: No, no.

25 THE COURT: But I'm trying to understand, what are you

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35

1 calling him about?

2 MR. REED: Your Honor, there is -- there is a question
3 that has to be decided by this trial, one of the questions is
4 was the foreclosure, if improper, and the lis pendens
5 associated with the foreclosure, if improper, either filed or
6 remaining -- had an effect at the value of the property in
7 question, which is what we're asking -- we're asking about.

8 Did it -- did it diminish the value of the property --
9 the market value of the property or the marketability of the
10 property? Did it affect the liquidity of the property in a
11 financing context?

12 But inherent in one of those questions, especially the
13 sale question, is a consideration of what my damages are if the
14 house doesn't sell versus if the house does sell. So if the
15 house sells, it's -- we're going to do a quick but-for
16 analysis -- if the house sells then I have X amount of dollars
17 that's -- it's my allegation that we would have X amount of
18 dollars, because the value of the property would be here at a
19 certain point, the debt owed on the property was substantially
20 lower, and there would be a certain amount of cash in my hand.

21 The other part to -- so I would be missing that cash.
22 That's an element of damage. I should have had that cash, but
23 for interference in the sale, the effect of the interference by
24 the bad foreclosure and the lis pendens.

25 The other side of that is, another damage that I have.

RESIDENTIAL CAPITAL, LLC, ET AL.

36

1 I have a bill on a house that has continued to grow that I
2 otherwise would not have, if it had sold. It is a logical,
3 completely connected situation. If I was a mailman and I was
4 run over in the street, and I had to sit in a rehab center for
5 four years, and I ran a bill because I was in the rehab center,
6 living in the rehab center instead of at home, I would have to
7 pay that bill and the person who perpetrated the wrongful act
8 would have to pay it, not me.

9 In this case, we couldn't -- we couldn't liquidate the
10 property.

11 THE COURT: Why not?

12 MR. REED: That's the question for trial, we're going
13 to --

14 THE COURT: Well, tell me why not? I mean, you said
15 this before. You still are in possession of the property. And
16 look, if you had sold the property at a loss --

17 MR. REED: I can't answer that.

18 THE COURT: Stop. If you had sold the property -- if
19 you had sold the property and your argument was that you
20 suffered economic damage as a result of diminution in the value
21 of the property because of wrongful foreclosure, okay. If
22 you'd sold the house for 500,000 and say it was worth 700,000,
23 but because of the foreclosure -- okay, but you still own the
24 property. You've not -- there's -- they've not stopped you --

25 MR. REED: So --

RESIDENTIAL CAPITAL, LLC, ET AL.

37

1 THE COURT: -- from selling the property.

2 MR. REED: Two things, Your Honor, I have to address.

3 One, when the market offers that come in are less than the
4 outstanding balance on the property, it's impossible to go to
5 settlement.

6 THE COURT: It's not. Did you -- did you seek
7 approval for a short sale? Because it's given all the time.
8 Did you?

9 MR. REED: Your Honor, I did not.

10 THE COURT: Okay. This is not --

11 MR. REED: We were in --

12 THE COURT: -- an evidentiary hearing.

13 MR. REED: -- we were in active litigation with GMAC
14 to discuss trying to resolve it. I mean, I think that my
15 saying no we did not, is probably not a correct
16 characterization. We were open to discussion --

17 THE COURT: All right, we're not going to --

18 MR. REED: -- as to how we could resolve it --

19 THE COURT: -- through it. All I'm --

20 MR. REED: -- and we did make discussions --

21 THE COURT: -- what I want to make clear -- I'll have
22 to hear what issues you're going to have Mr. Murdock testify
23 about. But in my July 29th order I said the following:
24 "Witness testimony will only be permitted regarding the one
25 specific property owned by the Reeds that was the subject of

RESIDENTIAL CAPITAL, LLC, ET AL.

38

1 the New Jersey foreclosure action and any damages the Reeds
2 suffered directly related to the alleged wrongful foreclosure.
3 The Reeds may not recover damages relating to any other
4 properties or lost business opportunities that the Reeds assert
5 they lost because of the foreclosure action. The Court
6 concludes as a matter of law that such other damages, if any,
7 are speculative and not foreseeable, and are not recoverable on
8 the Reeds' surviving claims."

9 I'm going to stop there. Call Mr. Murdock. You're
10 going to offer him -- if there are objections -- if somehow you
11 think he's offering competent evidence -- he has to have
12 personal knowledge of it -- competent evidence of damages or
13 losses you suffered specifically with respect to this property,
14 I'll hear it. If Ms. Hager has objections, I'm going to listen
15 to the objections and I'll rule on the objections at the time.

16 I'm not precluding you from calling him. I want to
17 make clear, I'm raising questions because it isn't obvious to
18 me. Okay? But --

19 MR. REED: Your Honor, I guess I am absolutely -- I
20 believe I understand that fully, and that's fine. I appreciate
21 you allowing me the opportunity to do it. And if doesn't
22 conform and if Ms. Hager objects, then fine.

23 And the last -- I just would like to reaffirm in
24 the -- on the record that the statement that I call the
25 mortgage company and ask for a short sale, our counsel, during

RESIDENTIAL CAPITAL, LLC, ET AL.

39

1 the several-year-and-a-half plus, we -- I mean, we had
2 mediation meetings and tried to actively discuss resolution,
3 short sale, contribution, non-con -- I mean, I don't -- you
4 know, I answered on simply my own -- did I make that call. Do
5 you understand what I answered?

6 THE COURT: Okay. We'll deal with it next week.

7 MR. REED: Okay.

8 THE COURT: Fine. So if I understand you correctly,
9 you're withdrawing the designation of Evan Hendricks as an
10 expert witness.

11 MR. REED: I would like to -- I would like to wait --
12 I'm going to go through the -- hopefully tonight -- the report.
13 And if it's -- if his -- based on your order, excludes -- two
14 orders, the order you just dictated and the order that you just
15 recited --

16 THE COURT: Fair enough.

17 MR. REED: -- excludes a lot of his testimony.

18 THE COURT: The only thing I ask you to do -- you're
19 clearly entitled to that opportunity. By Wednesday at 5
20 o'clock, please advise Ms. Hager whether you're intending to
21 call Mr. Hendricks as a witness. Okay? Either way, okay?

22 MR. REED: Fine.

23 THE COURT: So let her know by e-mail or whatever; no
24 I'm not going to call him; yes, I am going to call him. Okay?
25 Because I just want each side to know who the witnesses are.

RESIDENTIAL CAPITAL, LLC, ET AL.

40

1 Okay?

2 MS. HAGER: Yes, thank you, Your Honor. And I think
3 that Mr. Reed's determination as to Mr. Hendricks will factor
4 into our decision on Mr. Marquis as well.

5 THE COURT: Well, I've already ruled with respect to
6 the credit report issue. But the Hendricks expert report was
7 broader than just that. But I'm not -- the one piece of it
8 that I expressly ruled on is with respect to credit reports.

9 Okay.

10 Both sides -- so I know we got your briefs this
11 morning, your pre-trial memorandum. And I think you brought
12 yours with you. Is that --

13 MR. REED: Yeah, I filed -- I was directed to file --

14 THE COURT: That's fine. We'll get it. And have you
15 given Ms. Hager a copy?

16 MR. REED: I --

17 THE COURT: Did you e-mail it to them, or?

18 MR. REED: Okay, I will.

19 THE COURT: Okay.

20 MR. REED: I didn't know I -- I didn't know -- I think
21 that the way I read it, I didn't know if I should -- that was a
22 question for today: do I just hand it in? I didn't even know
23 if I should file it --

24 THE COURT: Well --

25 MR. REED: -- or do I give it to --

RESIDENTIAL CAPITAL, LLC, ET AL.

41

1 THE COURT: -- you don't have an ECF password; they
2 do. They --

3 MR. REED: Plus, I didn't know if I got their briefs.
4 I hadn't -- I hadn't received them electronically, so I didn't
5 know, do I get their briefs? Do I get a copy of their --

6 THE COURT: Of course you do.

7 MR. REED: Yeah.

8 THE COURT: After the hearing's over, talk to each
9 other, okay? Yes, you get the briefs. I want everybody
10 understanding exactly what each side's arguing. Okay.

11 Timed trial, six hours to each side. Use it
12 judiciously so you don't run out of time. Okay.

13 I'm permitting you to testify as a witness in what's
14 referred to as the narrative form.

15 MR. REED: I was looking that up.

16 THE COURT: You don't need to ask yourself questions
17 and answer the questions. Ms. Hager can certainly object to
18 portions of your testimony. You don't get carte blanche
19 because you're pro se.

20 But some issues, Ms. Hager, we'll -- that you might
21 object to, I will decide on the appropriate weight. I think I
22 can sort out what's admissible -- I'm not trying to tell you
23 don't object. Okay?

24 I don't allow speaking objections. What that means
25 is, if you -- obviously you have to speak, Mr. Reed. But that

RESIDENTIAL CAPITAL, LLC, ET AL.

42

1 means if you have an objection to a question that Ms. Hager
2 asks of one of her witnesses, all you need to say is
3 "objection", okay, you don't have to give me the grounds. If I
4 need any more from you, I will -- I don't want to hear speeches
5 from either side about -- okay?

6 So all you -- if there's something that's
7 objectionable, there's no jury here. Okay? I think I can sort
8 through stuff. Okay? But if you have an objection to a
9 question she asked, you need to state "objection" before the
10 witness answers. Okay? You just say "objection", and I'll --
11 if I need more from you, I'll ask. And Ms. Hager, same goes to
12 you. Okay?

13 MS. HAGER: Yes, Your Honor.

14 THE COURT: All right. Any other questions about the
15 evidentiary hearing? So we're going to start promptly at 9
16 o'clock.

17 MR. REED: Yes, I'm sleeping over the night before,
18 Your Honor.

19 THE COURT: All right. That solves that.

20 MR. REED: I've done that before.

21 THE COURT: Okay, Ms. Hager, anything else for today?

22 MS. HAGER: Your Honor, Mr. Reed and myself were
23 trying to stipulate to the admissibility of certain facts --

24 THE COURT: Okay.

25 MS. HAGER: -- and documents. We tried last week to

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43

1 have a meeting --

2 THE COURT: Well, you're both here, so when I get off
3 the bench, you can meet.

4 MS. HAGER: Right. Well, I did just want to state
5 that we've provided him last week with our proposed
6 stipulations of fact and also our witness list.

7 THE COURT: Okay.

8 MS. HAGER: And so definitely wanted to -- because I
9 think we can narrow some issues and make things easier for next
10 week. So I --

11 THE COURT: I would appreciate it if you both could do
12 that. Okay? Because there are going to be a lot of things
13 that aren't contested. All right?

14 Mr. Reed, let me ask you another question. Because
15 this has been an issue that was discussed at prior hearings.
16 Do you have any evidence of -- do you intend to offer any
17 evidence of the amount of attorneys' fees, if any, that you
18 incurred in defending the foreclosure action which was
19 ultimately dismissed?

20 MR. REED: I -- we supplied them during discovery, and
21 I supplied them --

22 THE COURT: Okay.

23 MR. REED: -- they'll go in as exhibits.

24 THE COURT: Okay.

25 MR. REED: We were finally able to obtain them from

RESIDENTIAL CAPITAL, LLC, ET AL.

44

1 their accountant.

2 THE COURT: Okay. Anything else you want to raise
3 today, Mr. Reed?

4 MR. REED: Who's picking up the baby from daycare
5 today. And my wife graduated -- or finished nursing school.

6 THE COURT: Congratulations to her.

7 All right, Ms. Hager?

8 MS. HAGER: Your Honor, maybe just to round things
9 out, we had some settlement discussions a few weeks back. The
10 Borrower Trust made an offer which Mr. Reed didn't accept. I
11 don't think that settlement is a possibility at this time, but
12 I just wanted to inform Your Honor that it was something that
13 we had explored.

14 THE COURT: Settlement's always a possibility. You
15 know, Mr. Reed, you have to think about -- look, I don't get in
16 the midst of settlement discussions, because I've got to be the
17 trier of fact. Okay? But the parameters of this trial have
18 been set by my rulings. I wanted both of you to go into this
19 trial knowing what issues are open for evidence and argument
20 and what issues are not. And I think I've done that. You may
21 disagree, but that's -- it is what it is.

22 And so settlements are often reached -- you both
23 have -- you're both on a level playing field now, because you
24 know what it is the Court has said he will listen to and what
25 he said he won't listen to. Okay? And it ought to give you a

RESIDENTIAL CAPITAL, LLC, ET AL.

45

1 sense of what do I have a reasonable chance of recovering and
2 what not; and am I better off trying to reach a settlement?
3 But you either will or you won't, you know?

4 The time -- I've set aside the time for the trial.

5 Okay? I encourage you to both continue to talk. You're both
6 here, so when I leave the bench, I encourage you to see if you
7 can work out the issue of stipulations. If you want to talk
8 about settlement, that's fine.

9 MS. HAGER: Sure.

10 THE COURT: Okay, anything else you want to raise
11 today?

12 MS. HAGER: No, Your Honor. Thank you.

13 THE COURT: Mr. Reed, anything else?

14 MR. REED: That's it, Your Honor.

15 THE COURT: Okay. See you next week.

16 MS. HAGER: Thank you, Your Honor.

17 MR. WISHNEW: Thank you for your time, Your Honor.

18 (Whereupon these proceedings were concluded at 11:04 AM)

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2 I N D E X

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4 RULINGS

	Page	Line
6 Trust's seventieth omnibus objection to	19	10
7 claims is sustained as to all claims but the		
8 Quiroz claim.		
9 Trust's motion in limine to exclude expert	23	9
10 testimony is denied.		
11 The Court will not exclude the experts'	23	17
12 testimony in its entirety.		
13 Mr. Reed and his experts may not testify	23	20
14 about the effect of credit reporting.		
15 Expert testimony about any alleged damages	23	25
16 resulting from the Reeds' failed efforts to		
17 refinance the mortgage on the property will		
18 only be permitted if competent evidence is		
19 offered and admitted.		
20 None of the experts will be permitted to	24	8
21 testify about noneconomic damages, as they		
22 are not qualified to do so.		
23 Ms. Donati may testify about NJ foreclosure	24	16
24 custom, practice and procedures, but not		
25 whether the debtors violated such rules.		

1 RULINGS

	Page	Line
3 Expert testimony will be permitted for the	24	21
4 alleged economic damages suffered by the		
5 Reeds.		
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2 C E R T I F I C A T I O N

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4 I, Penina Wolicki, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

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Penina Wolicki

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PENINA WOLICKI

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AAERT Certified Electronic Transcriber CET**D-569

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Date: September 9, 2014

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